(3) (1)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR (C.G.)

Criminal Appeal - 496 of 2002

APPELLANTS : 1. Jagmohan s/o Gendi Ram Rathia
Aged about 27 yrs.

(Convicted Accused Persons)

(In Jail)

2. Jugeet Ram s/o Manglu Ram Rathia
Aged about 23 yrs.

3. Duliha s/o Gendi Ram Rathia
Aged about 28 yrs.

4. ChamaraRam s/oGendi Ram Rathia
Aged about 28 yrs.

All Resident of Village-Supkona
P.S. Dharamjaigarh Distt. Raigarh

(1901)
on 1-5-02
Shri Y. V. Rahman Advocate
R. to D.R. (J)

VERSUS

NON-APPELLECANT : STATE OF CHHATISGARH
Through P.S. Dharamjaigarh
Distt. Raigarh (C.G.)

APPEAL U/S 374 (2) OF THE CODE OF CRIMINAL PROCEDURE

(26)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

DB: Hon'ble Shri L.C.Bhadoo and
Hon'ble Shri Sunil Kumar Sinha, JJ

08.7.2005

Shri K.N.Nande, learned counsel for the appellants.

Shri Akhil Mishra, Panel Lawyer for the State.

Heard.

Oral Order

The accused appellants by this appeal under section 374(2) have assailed the judgment dated 20.2.2002 passed by the learned Third Additional Sessions Judge (FTC) Raigarh, whereby the learned Addl. Sessions Judge convicted the accused appellants Jagmohan, Jugeet Ram, Duliha and Chamara under section 302 read with section 34 of the Indian Penal Code and sentenced each of the accused to undergo life imprisonment. The other six accused persons namely Bansi Ram, Ram, Premlal, Gopal, Amar Sai, Vishnu Prasad were convicted for commission of offence under sections 147 and 323 IPC and were sentenced till raising of the court u/s 323 IPC on the ground that these accused persons are poor and tribals. However, no sentence was passed in respect of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the offence u/s 147 IPC. The learned Addl. Sessions Judge acquitted all the accused persons u/s 302/149 & 307/149. However, no finding was recorded in respect of offence u/s 148 of I.P.C.

(2) The brief case of the prosecution, necessary for disposal of this criminal appeal, is that on 15.09.1999 festival of *Navakhai* was being celebrated by villagers at about 4 p.m. The accused Bansi went to the house of Phool Singh, father of the deceased for calling him. However, Phool Singh was not present in his house. Bansi was in a drunken condition. He started abusing on which Jotram asked him not to abuse, but instead of stopping himself, Bansi started assaulting Jotram. At that time Jeeramati and others tried to intervene on which the accused persons assaulted them with Lathi in a drunken condition. On hearing the voice of the quarrel, the deceased Tulsi Ram came on the scene, tried to intervene and asked the accused persons not to assault, on which the accused Chamra, Duliha, Jagmohan and Jugeetram inflicted injuries with lathi on his head, as a result of which Tulsiram fell down. Thereafter the mother of the injured namely Itwari Bai

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 3-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

came and took him inside the house and shifted him to the hospital. The matter was reported to the Police by Itwari Bai. The case was registered by P.W.2 Rajesh John under section 307 read with section 34 IPC and Tulsiram was sent for treatment to the Primary Health Center, Lailunga where he died on the next morning. On receiving the information of death of Tulsiram, the offence was converted u/s 302 IPC. The *Panchnama* of the dead body was prepared and the postmortem on the dead body of the deceased was conducted by Doctor R.S.Upadhyay (P.W.23). The doctor opined that Tulsiram died on account of head injury caused by hard and blunt object.

(3) The investigating officer after completion of the investigation filed a charge sheet against the accused persons in the Court of Judicial Magistrate First Class, Dharamjaigarh who committed the case to the Sessions Court Raigarh for trial from where the learned third Addl. Sessions Judge received the case on transfer.

(4) The learned Additional Sessions Judge after hearing the Public Prosecutor and counsel for the accused persons and after going through the material on record was of the opinion that prima

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 4 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

facie offences under sections 307/149, 302/149 and 148 were made out and accordingly the charges were framed and explained to the accused persons. The accused persons denied the charges and claimed for trial. The prosecution in order to prove the offences against the accused persons, examined as many as 24 witnesses. The statement of the accused persons were recorded by the learned Addl. Sessions Judge u/s 313 of Cr.P.C., in which they pleaded innocence stating that they have been falsely implicated in the crime.

(5) After hearing the Additional Public Prosecutor and counsel for the accused persons and placing reliance on evidence of the eye witnesses, the learned Addl. Sessions Judge convicted and sentenced the accused appellants and other co accused persons in the aforesaid manner.

(6) We have heard Shri S.N.Nande, learned counsel for the accused appellants and Mr.Akhil Mishra, Panel Lawyer for the State. Learned counsel for the accused appellants has not disputed the fact that the death of Tulsiram was homicidal in nature. P.W.23 Dr. R.S.Upadhyay has stated that on 16.9.1999 he

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश - 5 -	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

was posted at Community Health Center, Dharamjaigarh and on that date on the requisition of Police Station, Laulunga he conducted the postmortem on the body of Tulsiram. He stated that he found that there was a lacerated wound in size of 5cm x 1cm into scalp deep, the other lacerated wound was on the forehead near about left eye in size of 3cm x ½ cm x ½ cm. On dissection of the head he found that there was depressed fracture of vault of Skull and in his opinion both the injuries were caused by blunt and hard object. He has further stated that injury no.1 was grievous in nature and injury no.2 was simple in nature and in his opinion the cause of death was as a result of head injury and on account of haemorrhage. Therefore in view of the above evidence of the Doctor and also the evidence of the eye-witnesses namely Itwaribai (P.W.1) Jaitram (P.W.5), Sonsai (P.W.7) and Sanirobai (P.W.8), it stands proved that the nature of death of Tulsiram was homicidal.

(7) Now coming to the involvement of the accused appellants in the crime in question there are 4 eye witnesses to the incident *i.e.*, P.W.1, P.W.5, P.W.7, and P.W.8. Itwari Bai (P.W.1), the mother of

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –6–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

the deceased has stated that on 15.9.1999 at about 4 p.m., the quarrel started and when Tulsiram came out of the house to intervene, the accused Chamru inflicted injury on him with wooden club and Duliha, Jagmohan, Jugeet also assaulted him as a result of which Tulsiram fell down. He received the injuries on his head, mouth, chest, eye and neck. Thereafter he was taken to the hospital. However, on the next day morning he succumbed to the injuries in the hospital. P.W.5 Jaitram has stated that quarrel started between Tulsiram and accused persons. The accused Jagmohan, Jugeetram, Chamra and Duliha attacked Tulsiram with wooden club as a result of which, he received injury on the head. Thereafter he was shifted to Lailunga Hospital for treatment. P.W.7 Sonsai has also narrated in the same manner that the accused Chamru, Duliha, Jugeet and Jagmohan, attacked with the wooden club as a result of which Tulsi received injuries on the head and other part of the body. In cross examination in Para 4 he has stated that the accused Jugeet inflicted injury on the back, Duliha inflicted injury on the chest, accused Chamru and Jagmohan inflicted injury with the wooden club on the head of

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Tulsiram. P.W.8 Saniro Bai has stated that Jugeet, Jagmohan, Duliha, Chamru attacked Tulsi with wooden club as a result of which he received injury on the head and fell down on the ground. Thereafter his mother took him inside the house and the accused persons left the scene of occurrence. If we look into the evidence of 4 eye-witnesses, it would be clear that Sonsai (P.W.7) has categorically stated in his cross examination in Para 4 of the evidence that the accused Chamru and Jagmohan inflicted injury on the head of the deceased with wooden club and accused Jugeet on the back, Duliha on the chest whereas as per the Postmortem and injury report the deceased Tulsiram received only two lacerated wounds on the forehead and no other injury was found on the body of the deceased. The other three witnesses have not categorized the place of injury where the accused persons inflicted. However, they have stated that the deceased received injury on the head. Therefore, if we scrutinize the evidence of the 4 witness together then the conclusion to which we can reach is that the accused Chamru and Jagmohan inflicted the injury on the head of deceased and as far as other accused namely Jugeet and Duliha

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	are concerned, no corresponding injury was found on the body of the deceased which has been stated by P.W.7 Sonsai. It is not the version of prosecution witnesses that all the 4 accused inflicted injury on the head of the deceased. Therefore, after scrutinizing evidence of these 4 witnesses, we are of the considered opinion that the prosecution has not been able to prove the offence against the accused Jugeet and Duliha beyond reasonable doubt as the injuries which were said to have been caused by them were not found on the body of the deceased during medical examination. Therefore, finding of the trial Court convicting these two accused persons is not based on legal evidence rather the finding of the trial court to this extent is contrary to the evidence available on record as such their conviction cannot be sustained. Therefore, as far as the appeal of the accused Jugeet and Duliha are concerned, the same succeeds and their appeal is allowed and they are acquitted of the charge for commission of offence under section 302/34 IPC. **(8)** Now so far as conviction of the accused Jagmohan and Chamru u/s 302/34 IPC is concerned it has come on record that	

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आदेश पत्रक (पूर्वानुबद्ध)

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on the fateful day, there was festival of *Navakhai* and on this day the villagers who are the tribal people, eat, drink and enjoy, the accused party and rival parties had also participated in the festival and had consumed liquor on that day. From the prosecution evidence it is established that the dispute arose on a petty thing when Bansi went to call Phool Singh, the father of the deceased and finding that Phool Sing was not at his residence, Bansi started abusing in an inebriated condition, the same was objected by Jotram and in that process some of the persons of the complaining party came with lathis and a scuffle started and at that moment, the accused appellants Chamru and Jagmohan also came with the wooden club and when the deceased Tulsiram came out of his house and started intervening and stopping, in that process, all of a sudden without any preplan or premeditation in a spur of moment and in the heat of passion, the accused Chamru and Jagmohan inflicted injury on the head of the deceased Tulsiram and he fell down and then he was taken to the hospital and in the second day morning Tulsiram succumbed to the injuries in the hospital.

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आदेश पत्रक (पूर्वानुबद्ध)

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(9) In view of the above evidence, facts and circumstances of the case it cannot be inferred that the accused appellants Jagmohan and Chamru inflicted injury with an intention to cause death of deceased. As mentioned above on facts, the case is covered under Exception 4 of Section 300 I.P.C., therefore, we are of the considered opinion that an offence u/s 304 Part-II is made out against the accused Chamru and Jagmohan. Therefore, the finding of the trial court convicting Chamru and Jagmohan u/s 302 read with section 34 IPC cannot be sustained as the same is not based on correct appreciation of evidence.

(10) In the result, the appeal of Jugeet and Duliha succeeds and the same is allowed and they are acquitted of the charge u/s 302 read with section 34 IPC and in case they are not required in any offence, they be set at liberty forthwith. The appeal of Chamru and Jagmohan is also partly allowed. Their conviction u/s 302 read with section 34 IPC and sentence awarded thereunder are set aside. Instead thereof, they are convicted u/s 304 (Part II) and they are sentenced to undergo R.I. for 7 years. It is clear from the

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश –11–	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश
Rao	judgment that the accused appellants are in custody since 19.9.99 till today. Therefore, the accused appellants are entitled to set off u/s 428 Cr.P.C. **Sd/-** **L.C. Bhadoo** **Judge**	**Sd/-** **Sunil Kumar Sinha** **Judge**